

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDWARD DOMES,	)	
	)	Civil Action No. 05 - 457
	)	
Petitioner	)	Judge Gary L. Lancaster /
	)	Magistrate Judge Lisa Pupo Lenihan
vs.	)	
	)	
SUPERINTENDENT WAKEFIELD, PA.	)	
ATTORNEY GENERAL, and THE DISTRICT	)	
ATTORNEY OF ALLEGHENY COUNTY,	)	
	)	
Respondents	)	

**MEMORANDUM ORDER**

The above-captioned petition was received by the Clerk of Court on April 6, 2005, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Doc. No. 9), filed on January 19, 2006, recommended that the Petition for Writ of Habeas Corpus be dismissed and that a certificate of appealability be denied. Service was made on the Petitioner at SCI Greensburg, R.D. 10, Box 10, Greensburg, PA 15601, and on counsel of record for the Respondents. The parties were informed that in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, that they had ten (10) days to file any objections. On February 6, 2006, Petitioner filed Objections to the Magistrate Judge's Report and Recommendation (Doc. No. 10). Nothing in the objections merits a response except for Petitioner's request that this court give him a reasonable amount of time to plead why he can overcome the procedural default of issue one. Doc. 10 at 2, ¶ 4. As noted by the Magistrate

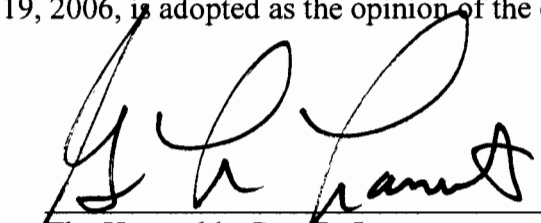
Judge, the Respondents pleaded in their answer that Petitioner procedurally defaulted the claim and provided to him a good summary of the procedural default doctrine. Petitioner did file a traverse in which he attempted to argue against application of the procedural default doctrine but he only argued that the Respondents did not support their argument with case law. See Doc. 9, at 26. Petitioner had his chance in the traverse to make his case as to cause and prejudice or a miscarriage of justice. He did not. Moreover, he could have raised his arguments on cause and prejudice or a miscarriage of justice in objections to the Magistrate Judge's application of the procedural default doctrine. He did not. He has been on notice since roughly May 31, 2005, when the answer was filed, about the procedural default of his first claim and about the exceptions to the procedural default doctrine. He is not entitled to any more time to attempt to concoct an argument. After review of the pleadings and the documents in the case, together with the Report and Recommendation and Petitioner's Objections, the following order is entered:

AND NOW, this 13<sup>th</sup> day of March, 2006;

**IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus is **DISMISSED**.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation (Doc. No. 9) of Magistrate Judge Lenihan, dated January 19, 2006, is adopted as the opinion of the court.

  
 The Honorable Gary L. Lancaster  
 United States District Court Judge

cc: Lisa Pupo Lenihan  
United States Magistrate Judge

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